

## SENATE BILL NO. 288

INTRODUCED BY HINKLE, BALES, DE. BARRETT, BLACK, T. BROWN, CURTISS, GEBHARDT,  
INGRAHAM, J. PETERSON, RIPLEY, STEINBEISSER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SECURITY FOR DAMAGES LAWS; ~~CLARIFYING THE~~  
~~CRITERIA FOR SETTING THE AMOUNT OF A WRITTEN UNDERTAKING; ELIMINATING THE MONETARY~~  
~~GAP FOR A WRITTEN UNDERTAKING; CLARIFYING WHAT CONSTITUTES AN INDUSTRIAL OPERATION~~  
~~AND ACTIVITY; AMENDING SECTION 27-19-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE~~  
REQUIRING A WRITTEN UNDERTAKING TO BE GIVEN BY A PARTY REQUESTING A HEARING OR A STAY  
BEFORE A COURT OR THE BOARD OF ENVIRONMENTAL REVIEW; AMENDING SECTIONS 75-2-103,  
75-2-211, AND 75-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 27-19-306, MCA, is amended to read:~~

~~"27-19-306. Security for damages. (1) Subject to 25-1-402, on granting an injunction or restraining~~  
~~order, the judge shall require a written undertaking to be given by the applicant for the payment of the costs and~~  
~~damages that may be incurred or suffered by any party who is found to have been wrongfully enjoined or~~  
~~restrained. Except as provided in subsection (2), the undertaking:~~

~~(a) must be fixed at a sum that the judge considers proper; and~~

~~(b) may be waived:~~

~~(i) in domestic disputes; or~~

~~(ii) in the interest of justice.~~

~~(2) (a) If a party seeks an injunction or restraining order against an industrial operation or activity, the~~  
~~judge shall require a written undertaking to be filed by the applicant. The amount of the written undertaking must~~  
~~be set in an amount that includes:~~

~~(i) all of the wages, salaries, and benefits of the employees of the party enjoined or restrained during the~~  
~~anticipated time that the injunction or restraining order will be in effect; and~~

~~(ii) all costs incurred as a result of delaying the industrial operation or activity, including but not limited~~

1 ~~to:~~

2 ~~—— (A) financing;~~

3 ~~—— (B) construction materials;~~

4 ~~—— (C) permitting and licensing; and~~

5 ~~—— (D) lost revenue.~~

6 The amount of the written undertaking may not exceed \$50,000 unless the interests of justice require.

7 ~~—— (b) The written undertaking must be conditioned to indemnify the:~~

8 ~~—— (i) employees of the party enjoined or restrained against lost wages, salaries, and benefits sustained by~~  
 9 ~~reason of the injunction or restraining order; and~~

10 ~~—— (ii) owner or operator of the industrial operation or activity.~~

11 ~~—— (b)(c) As used in this subsection (2)(a) (2), "industrial operation or activity" includes but is not limited to~~  
 12 ~~construction, mining, timber, energy development, and grazing operations, and natural resource development.~~

13 ~~—— (3) Within 30 days after the service of the injunction, the party enjoined may object to the sufficiency of~~  
 14 ~~the sureties. If the party enjoined fails to object, all objections to the sufficiency of the sureties are waived. When~~  
 15 ~~objected to, the applicant's sureties, upon notice to the party enjoined of not less than 2 or more than 5 days, shall~~  
 16 ~~justify before a judge or clerk in the same manner as upon bail on arrest. If the sureties fail to justify or if others~~  
 17 ~~in their place fail to justify at the time and place appointed, the order granting the injunction must be dissolved.~~

18 ~~—— (4) This section does not prohibit a person who is wrongfully enjoined from filing an action for any claim~~  
 19 ~~for relief otherwise available to that person in law or equity and does not limit the recovery that may be obtained~~  
 20 ~~in that action."~~

21  
 22 **NEW SECTION. SECTION 1. ENERGY DEVELOPMENT PROJECT -- HEARING AND PROCEDURES.** (1) IF THE  
 23 PERSON REQUESTING THE HEARING IS NOT THE APPLICANT OR PERMITTEE OF AN ENERGY DEVELOPMENT PROJECT, THE  
 24 BOARD OR THE DISTRICT COURT SHALL REQUIRE A WRITTEN UNDERTAKING TO BE GIVEN BY THE PARTY REQUESTING THE  
 25 HEARING FOR THE PAYMENT OF COSTS AND DAMAGES INCURRED BY THE PERMIT APPLICANT AND ITS EMPLOYEES UNLESS  
 26 THE BOARD OR THE DISTRICT COURT DETERMINES THAT ISSUANCE OF THE PERMIT WAS PROHIBITED BY STATUTE.

27 (2) WHEN REQUIRING AN UNDERTAKING, THE BOARD OR THE DISTRICT COURT SHALL USE THE SAME PROCEDURES  
 28 AND LIMITATIONS THAT ARE PROVIDED IN 27-19-306(2) THROUGH (4) FOR UNDERTAKINGS ON INJUNCTIONS.

29 (3) IF THE PERSON REQUESTING THE HEARING IS NOT THE APPLICANT OR PERMITTEE AND A STAY, AN INJUNCTION,  
 30 OR A RESTRAINING ORDER IS NOT REQUESTED, THE BOARD OR THE DISTRICT COURT SHALL REQUIRE A WRITTEN

1 UNDERTAKING PURSUANT TO THE PROVISIONS OF THIS SECTION.

3 **SECTION 2. SECTION 75-2-103, MCA, IS AMENDED TO READ:**

4 **"75-2-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
5 apply:

6 (1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

7 (2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous  
8 substances, or any combination thereof.

9 (3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere,  
10 including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42  
11 U.S.C. 7401, et seq.

12 (4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend  
13 to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere  
14 with the enjoyment of life, property, or the conduct of business.

15 (5) "Associated supporting infrastructure" means:

16 (a) electric transmission and distribution facilities;

17 (b) pipeline facilities;

18 (c) aboveground ponds and reservoirs and underground storage reservoirs;

19 (d) rail transportation;

20 (e) aqueducts and diversion dams;

21 (f) devices or equipment associated with the delivery of an energy form or product produced at an energy  
22 development project; or

23 (g) other supporting infrastructure that is necessary for an energy development project.

24 ~~(5)(6)~~ "Board" means the board of environmental review provided for in 2-15-3502.

25 ~~(6)(7)~~ (a) "Commercial hazardous waste incinerator" means:

26 (i) an incinerator that burns hazardous waste; or

27 (ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

28 (b) Commercial hazardous waste incinerator does not include a research and development facility that  
29 receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste  
30 treatment remediation technologies.

1           ~~(7)~~(8) "Department" means the department of environmental quality provided for in 2-15-3501.

2           ~~(8)~~(9) "Emission" means a release into the outdoor atmosphere of air contaminants.

3           (10) (a) "Energy development project" means each plant, unit, or other development and associated  
4 developments, including any associated supporting infrastructure, designed for or capable of:

5           (i) generating electricity;

6           (ii) producing gas derived from coal;

7           (iii) producing liquid hydrocarbon products;

8           (iv) refining crude oil or natural gas;

9           (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive  
10 pursuant to Title 15, chapter 70, part 5;

11           (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant  
12 to 15-32-701; or

13           (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or  
14 greater than 50 kilovolts.

15           (b) The term does not include a nuclear facility as defined in 75-20-1202.

16           ~~(9)~~(11) "Environmental protection law" means a law contained in or an administrative rule adopted  
17 pursuant to Title 75, chapter 2, 5, 10, or 11.

18           ~~(10)~~(12) "Hazardous waste" means:

19           (a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department  
20 administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

21           (b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

22           ~~(11)~~(13) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns  
23 combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the  
24 purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

25           (b) Incinerator does not include:

26           (i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as  
27 refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

28           (ii) space heaters that burn used oil;

29           (iii) wood-fired boilers; or

30           (iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

~~(12)~~(14) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

- (a) cultures and stocks of infectious agents;
- (b) human pathological wastes;
- (c) waste human blood or products of human blood;
- (d) sharps;
- (e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;
- (f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and
- (g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

~~(13)~~(15) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

- (i) equipment associated with the well and used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the well; and
- (ii) a group of wells under common ownership or control that produce oil or natural gas and that share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the wells.

(b) The equipment referred to in subsection ~~(13)~~(a) (15)(a) includes but is not limited to wellhead assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting tubing.

(c) The term does not include equipment such as compressor engines used for transmission of oil or natural gas.

~~(14)~~(16) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

~~(15)~~(17) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

~~(16)~~(18) "Small business stationary source" means a stationary source that:

- 1 (a) is owned or operated by a person who employs 100 or fewer individuals;  
2 (b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;  
3 (c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C.  
4 7661, et seq.;  
5 (d) emits less than 50 tons per year of an air pollutant;  
6 (e) emits less than a total of 75 tons per year of all air pollutants combined; and  
7 (f) is not excluded from this definition under 75-2-108(3).

8 ~~(17)~~(19) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous  
9 wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial  
10 wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution  
11 control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal  
12 droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof;  
13 wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt  
14 shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or  
15 petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

16 (b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes  
17 regulated under the mining and reclamation laws administered by the department of environmental quality, or  
18 slash and forest debris regulated under laws administered by the department of natural resources and  
19 conservation."  
20

21 **SECTION 3. SECTION 75-2-211, MCA, IS AMENDED TO READ:**

22 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule  
23 provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

24 (2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section,  
25 not later than 180 days before construction, installation, or alteration begins or as a condition of use of any  
26 machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air  
27 pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator  
28 shall file with the department the appropriate permit application on forms available from the department.

29 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file  
30 the permit application with the department no later than January 3, 2006, or 60 days after the initial well

1 completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas  
2 well facility is:

3 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead  
4 equipment into lease tanks from the ultimate producing interval after casing has been run; and

5 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of  
6 producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

7 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment  
8 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the  
9 application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may  
10 not operate the oil or gas well facility and is liable for a violation of this section for every day of construction,  
11 installation, or operation of the facility.

12 (d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas  
13 well facility during the time from the initial well completion date until the department's decision on the application  
14 is final.

15 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the  
16 federal air permitting provisions of 42 U.S.C. 7475 or 7503.

17 (3) The permit program administered by the department pursuant to this section must include the  
18 following:

19 (a) requirements and procedures for permit applications, including standard application forms;

20 (b) requirements and procedures for submittal of information necessary to determine the location,  
21 quantity, and type of emissions;

22 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

23 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal  
24 agencies, as appropriate;

25 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

26 (f) procedures for the transfer of permits;

27 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
28 department;

29 (h) requirements and procedures for appropriate emission limitations and other requirements, including  
30 enforceable measures necessary to ensure compliance with those limitations and requirements;

1 (i) requirements and procedures for permit modification and amendment; and

2 (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations  
3 at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the  
4 requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the  
5 department in advance of each change in location.

6 (4) This section does not restrict the board's authority to adopt regulations providing for a single air  
7 quality permit system.

8 (5) Department approval of an application to transfer a portable emission source from one location to  
9 another is exempt from the provisions of 75-1-201(1).

10 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
11 appropriate applications.

12 (7) The department shall require that applications for permits be accompanied by any plans,  
13 specifications, and other information that it considers necessary.

14 (8) An application is not considered filed until the applicant has submitted all fees required under  
15 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)  
16 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of  
17 an application that the application is incomplete and fails to list the reasons why the application is considered  
18 incomplete, the application is considered filed as of the date of the purported filing.

19 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the  
20 preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter  
21 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

22 (i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if  
23 the department prepares the environmental impact statement;

24 (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state  
25 agency other than the department has been designated by the governor as lead agency for preparation of the  
26 environmental impact statement; or

27 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a  
28 permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact  
29 statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

30 (b) If an application does not require the preparation of an environmental impact statement, is not subject



1 to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475,  
2 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed  
3 application, as provided in subsection (8), of its approval or denial of the application, except as provided in  
4 subsection (14).

5 (c) If an application does not require the preparation of an environmental impact statement and is subject  
6 to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant,  
7 in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or  
8 denial of the application.

9 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an  
10 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the  
11 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application,  
12 as provided in subsection (8).

13 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that is  
14 also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall  
15 prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under  
16 this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within  
17 the time period provided for in 75-2-215(3)(e).

18 (f) The time for notification may be extended for 30 days by written agreement of the department and  
19 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.  
20 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's  
21 agent.

22 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the  
23 application. This does not limit or abridge the right of any person to seek available judicial remedies to require  
24 the department to act in a timely manner.

25 (10) When the department approves or denies the application for a permit under this section, a person  
26 who is jointly or severally adversely affected by the department's decision may request a hearing before the  
27 board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit  
28 setting forth the grounds for the request must be filed within 30 days after the department renders its decision.  
29 The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to  
30 a hearing before the board under this subsection.

1 (11) Except as provided in [section 1]:

2 (a) ~~The~~ the department's decision on the application is not final until 15 days have elapsed from the date  
3 of the decision;

4 (b) ~~The~~ the filing of a request for hearing does not stay the department's decision. However, the board  
5 may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

6 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

7 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
8 requesting the stay.

9 (c) ~~Upon~~ upon granting a stay, the board may require a written undertaking to be given by the party  
10 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees  
11 if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use  
12 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

13 (12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on  
14 draft air quality permits for applications that:

15 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

16 (b) are subject to the requirements of 75-2-215; or

17 (c) require the preparation of an environmental impact statement.

18 (13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on  
19 draft air quality permits not subject to subsection (12).

20 (14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

21 (a) the period as provided in subsection (13) in which the public may submit comments on draft air quality  
22 permits not subject to subsection (12); and

23 (b) the period for notifying an applicant of its final decision on approval or denial of an application, as  
24 provided in subsection (9)(b).

25 (15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or  
26 creation of:

27 (i) general permits covering multiple similar sources; or

28 (ii) other permits covering multiple similar sources.

29 (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the  
30 permit upon authorization by the department or upon notice to the department."

**SECTION 4. SECTION 75-5-103, MCA, IS AMENDED TO READ:**

**"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure that is necessary for an energy development project.

~~(4)~~(2) "Board" means the board of environmental review provided for in 2-15-3502.

~~(2)~~(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(3)~~(4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(4)~~(5) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(5)~~(6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(6)~~(7) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(7)~~(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(8)~~(9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(10) (a) "Energy development project" means each plant, unit, or other development and associated

1 developments, including any associated supporting infrastructure, designed for or capable of:

2 (i) generating electricity;

3 (ii) producing gas derived from coal;

4 (iii) producing liquid hydrocarbon products;

5 (iv) refining crude oil or natural gas;

6 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive  
7 pursuant to Title 15, chapter 70, part 5;

8 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant  
9 to 15-32-701; or

10 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or  
11 greater than 50 kilovolts.

12 (b) The term does not include a nuclear facility as defined in 75-20-1202.

13 ~~(9)~~(11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,  
14 whether or not those uses are included in the water quality standards.

15 ~~(10)~~(12) "High-quality waters" means all state waters, except:

16 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by  
17 the board's classification rules; and

18 (b) surface waters that:

19 (i) are not capable of supporting any one of the designated uses for their classification; or

20 (ii) have zero flow or surface expression for more than 270 days during most years.

21 ~~(11)~~(13) "Impaired water body" means a water body or stream segment for which sufficient credible data  
22 shows that the water body or stream segment is failing to achieve compliance with applicable water quality  
23 standards.

24 ~~(12)~~(14) "Industrial waste" means a waste substance from the process of business or industry or from  
25 the development of any natural resource, together with any sewage that may be present.

26 ~~(13)~~(15) "Interested person" means a person who has a real property interest, a water right, or an  
27 economic interest that is or may be directly and adversely affected by the department's preliminary decision  
28 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested  
29 authorization to degrade high-quality waters.

30 ~~(14)~~(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to

one of its existing or future nonpoint sources or to natural background sources.

~~(15)~~(17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(16)~~(18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(17)~~(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(18)~~(20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(19)~~(21) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(20)~~(22) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(21)~~(23) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(22)~~(24) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(23)~~(25) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(24)~~(26) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(25)~~(27) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(26)~~(28) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(27)~~(29) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(28)~~(30) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(29)~~(31) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(30)~~(32) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(31)~~(33) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its

designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(32)~~(34) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(33)~~(35) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(34)~~(36) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(35)~~(37) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(36)~~(38) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(37)~~(39) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

**NEW SECTION. SECTION 5. WRITTEN UNDERTAKING.** IF THE PERSON REQUESTING A HEARING UNDER 75-5-611 IS NOT THE APPLICANT OR PERMITTEE OF AN ENERGY DEVELOPMENT PROJECT, THE DISTRICT COURT SHALL REQUIRE A WRITTEN UNDERTAKING TO BE GIVEN BY THE PARTY REQUESTING THE HEARING FOR THE PAYMENT OF COSTS AND DAMAGES INCURRED BY THE APPLICANT OR PERMITTEE UNLESS THE DISTRICT COURT DETERMINES THAT ISSUANCE OF THE PERMIT WAS PROHIBITED BY STATUTE. WHEN REQUIRING AN UNDERTAKING, THE DISTRICT COURT SHALL USE THE SAME PROCEDURES AND LIMITATIONS THAT ARE PROVIDED IN 27-19-306(2) THROUGH (4) FOR UNDERTAKINGS ON INJUNCTIONS.

**NEW SECTION. SECTION 6. CODIFICATION INSTRUCTION.** (1) [SECTION 1] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 2, PART 2, AND THE PROVISIONS OF TITLE 75, CHAPTER 2, PART 2, APPLY TO [SECTION 1].

(2) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 5, PART 6, AND THE PROVISIONS OF TITLE 75, CHAPTER 5, PART 6, APPLY TO [SECTION 5].

**NEW SECTION.** **Section 7. Effective date.** [This act] is effective on passage and approval.

**NEW SECTION. SECTION 8. APPLICABILITY.** [THIS ACT] APPLIES TO JUDICIAL AND BOARD OF ENVIRONMENTAL REVIEW HEARING AND APPEAL PROCEEDINGS INITIATED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

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